

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5031 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARBHAI M THAKORE THRO PAHRAJNIKANT D PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JB PATEL for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

Ms.Katha Gajjar, A.G.P. for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/11/2000

ORAL JUDGEMENT

1. The petitioner has challenged the order dated 10.4.1991 of Gujarat Revenue Tribunal rejecting the Review Application of the petitioner.

2. The Review Application u/s.17 of the Bombay Revenue Tribunal Act, 1957, was moved seeking review of the order passed by the Tribunal in Revision Application u/s. 76 of the Bombay Tenancy Act. The petitioner's father Mangalbai Thakor was cultivating the Agricultural land bearing Survey No.612 and 627 in village Anand. The Mamlatdar and A.L.T., Anand in Tenancy Case held the aforesaid Mangalbai Thakor as tenant of both the land and fixed the purchase price vide order dated 29.5.1974. Mangalbai Thakor expired in 1983, thereafter the name of the petitioner was entered by way of mutation. In Town Planning Scheme No.7 the aforesaid two plots fell on account of which plot No.54 was allotted to the petitioner in lieu of these two plots. The petitioner moved an application on 3.2.1988 u/s.43 and 63 of the Bombay Tenancy Act for N.A. purpose because he wanted to sell the same to intending purchaser. His application was allowed. The premium was fixed at Rs.9,56,226.95 ps. N.A. permission was granted on 17.10.1988. Against this order revision Application was filed u/s.76 of the Bombay Tenancy Act in which quantum of premium was challenged. The revision was partly allowed and the quantum of premium was reduced from Rs.9,56,226.95 ps. to Rs.7,14,502/- and reduction of balance of Rs.2,42,724/was ordered. Against this order of reducing the premium the State of Gujarat filed Review Application. The said Review Application was decided. The Review Application was also moved by the petitioner which was kept pending. It was subsequently taken up and vide order dated 22.10.1990 it was held that the Review Application of the petitioner was within limitation. The Review Application of the petitioner was therefore taken up for hearing on merits. Through the impugned order the Gujarat Revenue Tribunal came to the conclusion that since the petitioner himself applied for N.A. permission u/s. 43 and 63 of the Bombay Tenancy Act and offered to pay premium he was stopped from challenging that the provisions of Sections 43 and 63 of the Bombay Tenancy Act are not applicable. The Tribunal also found that on account of legislative changes and deletion of Section 121 of the Gujarat Town Planning & Urban Development Act with effect from 12.6.1985 the provisions of the Bombay Tenancy Act were applicable and since the application u/s. 43 and 63 of the Bombay Tenancy Act was moved for N.A. permission on 3.2.1988 i.e. after 12.6.1985 the petitioner was bound to apply for N.A. permission. It was also observed that even under the Gujarat Town Planning & Urban Development Act the nature of the tenure did not change and the tenancy was not abolished. With these findings the Review Application was dismissed.

3. I have gone through the impugned order under challenge and I do not find any illegality therein. The order is perfectly in accordance with law which hardly requires any interference in exercise of jurisdiction under Article 226 of the Constitution of India.

The petition is, therefore, dismissed with no order as to costs.

sd/-

Date : November 09, 2000 (D. C. Srivastava, J.)

sas